

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID CIPOLLARO,

Plaintiff,

- against -

13 Civ. 8420 (RWS)

OPINION

NYC TRANSIT AUTHORITY,

Defendant.

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A P P E A R A N C E S

Pro Se

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NEW YORK CITY TRANSIT AUTHORITY
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By: Kristen M. Nolan, Esq.

Sweet, D.J.

Plaintiff David Cipollaro pro se ("Plaintiff" or "Cipollaro") has moved for reconsideration of this Court's September 11, 2014 Opinion ("September Opinion") granting defendant New York City Transit Authority's ("Defendant" or "NYCTA") motion to dismiss.

Based on the conclusions set forth below, the Plaintiff's motion is denied.

Prior Proceedings

The facts and prior proceedings in this action are set forth in the September Opinion, familiarity with which is assumed. (See Dkt. No. 30) The Court's September Opinion held that Plaintiff's claims were time barred, barred by res judicata, and barred under applicable New York law.

The instant motion was marked fully submitted on December 29, 2014.

Applicable Standard

Under Local Rule 6.3, a court may grant reconsideration where the moving party demonstrates an "intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Henderson v. Metro. Bank & Trust Co., 502 F. Supp. 2d 372, 375-76 (S.D.N.Y. 2007) (quotation marks and citations omitted); see also Parrish v. Sollecito, 253 F. Supp. 2d 713, 715 (S.D.N.Y. 2003). However, reconsideration of a court's prior order is an "extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." Sikhs for Justice v. Nath, 893 F. Supp. 2d 598, 605 (S.D.N.Y. 2012) (citations omitted). Accordingly, the standard of review applicable to such a motion is "strict." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995).

The purpose behind confining reconsideration to matters that were "overlooked" is to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." Polsby v. St. Martin's Press, Inc.,

No. 97-CV-690, 2000 WL 98057, at *1 (S.D.N.Y. Jan. 18, 2000) (citation and quotation marks omitted). Motions for reconsideration "are not vehicles for taking a second bite at the apple" Rafter v. Liddle, 288 Fed. App'x. 768, 769 (2d Cir. 2008) (citation and quotation marks omitted).

Plaintiff's Motion to Reconsider Is Denied

Plaintiff fails to cite to any change in controlling law, newly available evidence, clear error, or manifest injustice. Plaintiff's motion simply repeats the same arguments included in previous motion papers. See Unicredito Italiano Spa v. JP Morgan Chase Bank, 288 F. Supp. 2d 485 (S.D.N.Y. 2003) (denying a motion for reconsideration that "merely reiterate[d] arguments raised in the briefing of the original motions").

Plaintiff also adds two new claims to his motion for reconsideration: (1) that he was allegedly not served with NYCTA's motion papers during one of the two state court proceedings and (2) that he never received an EEOC right to sue letter. However, a motion for reconsideration may not ". . . be a vehicle for advancing new theories that a party failed to articulate in arguing the underlying motion." Fesco Ocean Mgmt.

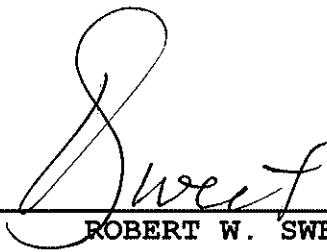
Ltd. v. High Seas Shipping Ltd., No. 06 CIV 1055 NRB, 2007 WL 1406624, *1 (S.D.N.Y. May 9, 2007) (citations omitted).

Conclusion

For the reasons stated above, Plaintiff's motion is denied.

It is so ordered.

New York, NY
January 3, 2015



ROBERT W. SWEET
U.S.D.J.